We do not understand the law of slander to be, that it is a defence that the slanderer believed his words to be true, when he had no grounds for so believing. Belief must have a foundation in something. Take away foundation, and what can be left? The charge asked seems to us a solecism. Belief can only be claimed as a defence, or in mitigation, where it is based upon such facts or reasons as would incline a reasonable person so to believe. Inasmuch as this charge was asked in reference to exemplary damages, and there was evidence tending to show that the words had been spoken under circumstances indicating wantonness and recklessness, the charge was properly refused.

It appears to be seriously argued that, in a minister of the gospel, a single act of intoxication is not a fault, and therefore a charge of that kind cannot be injurious. We can hardly assent to this proposition. In a religious teacher, one offence of the kind must be considered a grave departure from propriety and duty; and to say that the act has been committed is calculated to impair usefulness.

As to the question of excessive damages, the verdict was large; still we do not think defendant can complain, in view of all the circumstances of the case. Judgment affirmed.

DAY, J., dissented as to the admissibility of evidence of defendant's pecuniary ability.

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*Supreme Court of Illinois.*

## WILLIAM ROTH *v.* MARY EPPY.

Under the statute of Illinois giving a right of action against a person selling liquor to a habitual drunkard it is sufficient to aver and prove that habitual intoxication was caused *in part* by such sale. It is a tort and plaintiff may recover as in other torts if there is enough evidence to support any part of his charge.

In an action by a wife for selling liquor to her husband, evidence that his intoxication led to loss of his situation and inability to get other employment is admissible.

Exemplary damages can only be recovered where there is damage in fact. Exemplary and punitive damages are synonymous terms.

The right of action is given by the statute to the person injured without reference to the defendant's knowledge of the consequences of his act.

THIS was an action on the case, brought by Mary Eppy, under the Liquor Act, against William Roth, to recover for injury in her means of support, in consequence of the habitual intoxication of

her husband, George Eppy, from intoxicating liquors sold and given to him by Roth. The plaintiff in the case below recovered a verdict and judgment for $1200, and the defendant appealed.

Appellee's husband had for years been drinking to excess at appellant's drinking saloon and continued to drink there up to the time he became insane, June 21st 1874. He was sent to the Insane Asylum at Elgin in July 1874, and remained there under treatment until some time in April 1875, when he was released and returned home.

*Puterbaugh, Lee & Quinn* and *Charles Feinse*, for defendant.

*L. Harmon*, for plaintiff.

The opinion of the court was delivered by

SHELDON, J.—There are various reasons urged for the reversal of the judgment.

The averment in the declaration is, that the defendant sold and gave to Eppy intoxicating liquors "and thereby caused him, the said George Eppy, to become and he was during that time before named habitually intoxicated." It is claimed this is an averment that the intoxication was caused *in whole* by the defendant and that such must be the proof; that it is not sufficient that the intoxication was caused *in part* by defendant; and that the most which the proof shows is that defendant caused the intoxication *in part*.

The statute gives the right of action, where the defendant shall have caused the intoxication in whole or in part. Contracts are entire and must be proved substantially as alleged, but torts are divisible, and in them the plaintiff may prove a part of his charge and recover if there be enough proved to support the tort: *Hill* v. *Blanford*, 45 Ill. 8. This objection we regard as without force.

The point is made that the statute upon which appellee relied for a recovery was repealed before the suit was instituted.

The suit was brought under the provisions of an act entitled "An act to provide against the evils resulting from the sale of intoxicating liquors in the state of Illinois," approved January 13th 1872. It is said this act was fully revised by statutes of 1874 in an act entitled "An act to provide for the licensing of and against the evils arising from the sale of intoxicating liquors," approved March 30th 1874, and in force July 1st 1874; that the statute of 1874 was a revision of the whole subject and was intended as a substitute for the Act of 1872, and therefore the Act

of 1872 was repealed, and ceased to be in force July 1st 1874, which was before the commencement of this suit. A complete answer is found to this position on page 1012 Rev. Stat. 1874, under sections 2 and 4, where it is provided that no new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offence committed against the former law, or as to any act done, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offence or act so committed or done, or any right accrued or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform so far as practicable to the laws in force at the time of such proceeding.

It is insisted that the evidence fails to show any habitual intoxication on the part of George Eppy.

It is conceded by appellant's counsel that the insanity of Eppy was caused by long-continued, excessive use of alcoholic liquors; that he had been in the habit of using intoxicating liquors to excess for many years, but it is denied that it was to the extent of being habitually intoxicated. Very many witnesses on both sides were examined upon this point. Facts were detailed and the opinions of witnesses given. There was a conflict of testimony as to opinions of witnesses, whether, at the various times testified to, the condition of Eppy from the liquor he drank was one of intoxication or not. The testimony of some of the witnesses was that they frequently saw Eppy at defendant's place intoxicated. Other witnesses stated his condition as verging on but not amounting to actual intoxication.

The question was one of fact for the determination of the jury upon the whole evidence in the light of their own observation. We think the decision of the question should rest with the finding of the jury, no sufficient reason appearing for disturbing it.

It is insisted that the court below admitted improper and rejected proper evidence. Eppy having recovered he returned home from the insane asylum in April 1875, and inquiries were made of witnesses as to his efforts to get employment, to obtain his former situation as locomotive engineer on the railroad, and his inability to do so. Exception was taken to such inquiries, which were permitted.

As bearing upon the question of damages, it was proper to show any want of and inability to obtain employment in consequence of Eppy's previous habits of intoxication. The inquiry as to his

desire for intoxicating liquors should have been excluded, but the refusal to exclude the inquiry was not of sufficient importance to amount to a fatal error.

Some evidence as to Eppy and his wife drinking together was excluded, which might properly have been received on the question of exemplary damages; but there was much other evidence of the same character, which was received, which was abundantly sufficient for all purpose of advantage to the defendant on that head.

There was no error in not admitting proof of a license.

Objection is taken to the giving, modifying and refusing of instructions. Several of the questions raised under the instructions were met and disposed of adversely to the views of appellant's counsel, in the case of *Hackett* v. *Smelsley*, decided at the January Term 1875, and we need not further allude thereto. Other questions are sufficiently disposed of by what has already been said.

The third instruction for the plaintiff was that under its hypothesis the jury had a right, if they thought proper, to allow the plaintiff such punitive damages as they thought the evidence warranted.

It is erroneously supposed that this militates against the decision in *Freese* v. *Tripp*, 70 Ill. 496. All that was there decided in regard to exemplary damages, was that to support a finding of exemplary damages, there must be a finding of actual damages, and that without this, exemplary damages cannot be awarded. But the present instruction was on the hypothesis among others that actual damage had been sustained. The employment in the instruction of the words "punitive damages" instead of "exemplary damages" was not material. They are synonymous terms: *Hackett* v. *Smelsley*, *supra*.

Some of the instructions for plaintiff may be faulty in being argumentative, but there is not sufficient in this respect to make them fatally erroneous.

We perceive no error in any modification which was made of defendant's instructions.

The fifteenth instruction asked by the defendant, which the court refused to give, was one that assumed to define the words "habitual intoxication." These are terms in common use, generally understood in their application, more or less familiar to the observation of all unlearned persons, of no peculiar legal signification, calling for judicial exposition. The definition which was here asked to be given, was not especially instructive to a jury. We do not consider that for the want of this instruction, there was a loss to

the jury of any words of essential enlightment on the question of what was habitual intoxication.

Appellant's fifth refused instruction was to the effect that the defendant was not responsible for consequences which he or any reasonable or prudent man could not reasonably have foreseen, as the natural consequence of selling liquors to the plaintiff's husband.

The provision of the statute is that one who shall be injured in person or property, or means of support, in consequence of the intoxication, habitual or otherwise, of any person, shall have the right of action.

Appellant's twelfth refused instruction was calculated to mislead the jury, who would be likely to conclude from it that they could not in their verdict go beyond the actual damages sustained, and give exemplary damages.

The remarks already made in reference to appellee's third instruction are applicable to this twelfth refused instruction.

It is lastly complained that the damages are excessive. From an examination of the evidence we see no sufficient ground for any interference with the verdict of the jury on this score.

Finding no error in the record sufficient for the reversal of the judgment, it must be affirmed.

BREESE, J., dissented.

## ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
COURT OF CHANCERY OF NEW JERSEY.[2]
SUPREME COURT COMMISSION OF OHIO.[3]
SUPREME COURT OF PENNSYLVANIA.[4]
SUPREME COURT OF VERMONT.[5]

### ACCOUNT.

*Statute of Limitations—Interest.*—In matters of account, one party may credit the other items that represent a legal indebtedness that should go into the account, and thereby avoid the bar of the Statute of Limita-

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 3 or 4 Otto.

[2] From C. E. Green, Esq., Reporter; to appear in vol. 12 of his Reports.

[3] From E. L. De Witt, Esq., Reporter; to appear in 27 Ohio State Reports.

[4] From P. F. Smith, Esq., Reporter; to appear in 80 Penna. St. Reports.

[5] From Hon. J. W. Rowell, Reporter; to appear in 48 Vermont Reports.